New York State Department of State
Division of Corporations, State Records and Uniform Commercial Code
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LOCAL LAW FILING

(Use this form to file a local law with the Secretary of State.)

Text of law should be given as amended. Do not include matter being eliminated and do not use italics or underling to indicate new matter.

Town of DUNKIRK

Local Law No. 4 of the year 2021.

FILED
STATE RECORDS
DEC 27 2021
DEPARTMENT OF STATE

A local law to Revise Solar Facilities Law, Local Law #3 of 2017

Be it enacted by the Town Board of the Town of Dunkirk

Town of DUNKIRK

Section 1-A – Authority

Authority: This Solar Energy Local Law is adopted pursuant to sections 261-263 of the Town Law and section 20 of the Municipal Home Rule Law of the State of New York, which authorizes the Town of Dunkirk to adopt zoning provisions that advance and protect the health, safety and welfare of the community, and, in accordance with the Town law of New York State, "to make provision for, so far as conditions may permit, the accommodation of solar energy systems and equipment and access to sunlight necessary therefor."

Section 1-B - Purpose

Purpose: The Town of Dunkirk recognizes the importance of solar energy systems in generating electricity for on-premises and off-premises use, the reduction of greenhouse gas emissions, and support for the continuously growing market for solar energy systems. The Town Board of the Town of Dunkirk does hereby desire to enact this Local Law to regulate the construction maintenance, and placement of solar energy systems and equipment greater than 1 kW in the Town of Dunkirk. The purpose of this Local Law is to mitigate potential impacts on neighboring properties from solar energy systems installed

near their property, while preserving the rights of property owners to install these systems on their property.

This Local Law also serves the following additional objectives:

1. To take advantage of a safe, abundant, renewable and non-polluting energy resource;
2. To decrease the cost of electricity to the owners of residential and commercial properties, including single-family houses;
3. To increase employment and business development in the Town, to the extent reasonably practical, by furthering the installation of solar energy systems;
4. To mitigate the impacts of solar energy systems on environmental resources such as important agricultural lands, forests, wildlife and other protected resources, and;
5. To create synergy between solar and other stated goals of the community pursuant to its Comprehensive Plan, such as, but not limited to, revitalization and redevelopment in commercial cores, encouraging additional residential development, and protecting viable agricultural lands.

Section 2 - Definitions

ACCESSORY BUILDING: A subordinate building located on the same lot with the main building, occupied by or devoted to an accessory use.

AGRICULTURAL DUAL-USE: Also referred to as "dual-use" or "agrivoltaic," this involves the practice of co-locating solar photovoltaic panels on farmland in such a manner that primary agricultural activities including animal grazing, crop or vegetable production can continue simultaneously on that farmland.

BUILDING-INTEGRATED SOLAR ENERGY SYSTEM: A combination of Solar Panels and Solar Energy Equipment integrated into any building envelope system such as vertical facades, semitransparent skylight systems, roofing materials, or shading over windows, which produce electricity for onsite consumption.

COLLECTIVE SOLAR: Solar installations owned collectively through subdivision homeowner associations or similar groups. Collective solar installations shall be regulated depending upon generation capacity as either small-scale (Tier 1), commercial-scale (Tier 2), or utility-scale (Tier 3), as defined herein.

FARMLAND OF STATEWIDE IMPORTANCE: Land, designated as "Farmland of Statewide Importance" in the U.S. Department of Agriculture Natural Resources Conservation Service (NRCS)'s Soil Survey Geographic (SSURGO) Database on Web Soil Survey, that is of statewide importance for the production of food, feed, fiber, forage, and oilseed crops as determined by the appropriate state agency or agencies. Farmland of Statewide Importance may include tracts of land that have been designated for agriculture by state law.

GLARE: The effect by reflections of light with intensity sufficient as determined in a commercially reasonable manner to cause annoyance, discomfort, or loss in visual performance and visibility in any material respects.

GROUND-MOUNTED SOLAR ENERGY SYSTEM: A Solar Energy System that is anchored to the ground via a pole or other mounting system, detached from any other structure, that generates electricity for onsite or offsite consumption.

NATIVE PERENNIAL VEGETATION: native wildflowers, forbs, and grasses that serve as habitat, forage, and migratory way stations for pollinators and shall not include any prohibited or regulated invasive species as determined by the New York State Department of Environmental Conservation.

POLLINATOR: bees, birds, bats, and other insects or wildlife that pollinate flowering plants, and includes both wild and managed insects.

PRIME FARMLAND: Land, designated as "Prime Farmland" in the U.S. Department of Agriculture Natural Resources Conservation Service (NRCS)'s Soil Survey Geographic (SSURGO) Database on Web Soil Survey, that has the best combination of physical and chemical characteristics for producing food, feed, forage, fiber, and oilseed crops and is also available for these land uses.

PRINCIPAL BUILDING: A building in which is conducted the primary use of the lot on which it is located.

PRINCIPAL USE: The main purpose for which a site is developed and occupied, including the activities that are conducted on the site a majority of the hours during which activities occur.

QUALIFIED SOLAR CONTRACTOR/INSTALLER: A firm that employs or subcontracts a qualified person (installer) to supervise the installation. The installer shall have the skills and knowledge related to the construction and operation of solar electrical equipment and installations and has received safety training on the hazards involved. Contractors who are on the list of eligible photovoltaic installers maintained by the New York State Energy Research and Development Authority (NYSERDA) or are certified as a solar installer by the North American Board of Certified Energy Practitioners (NABCEP), Underwriters Laboratory (UL), or Journeymen Wiremen who have completed the International Brotherhood of Electrical Workers/National Electrical Contractors Association installers for the purposes of this definition. Persons who are not of NYSERDA's list or do not hold these credentials may be deemed to be qualified solar installers if the Building Inspector determines such persons have had adequate training to determine the degree and extent of the hazard and the personal protective equipment and job planning necessary to perform the installation safely.

ROOF-MOUNTED SOLAR ENERGY SYSTEM: A Solar Energy System located on the roof of any legally permitted building or structure that produces electricity for onsite or offsite consumption.

SOLAR ACCESS: Space open to the sun and clear of overhangs or shade so as to permit the use of active and/or passive Solar energy systems on individual properties.

SOLAR ENERGY EQUIPMENT: Electrical material, hardware, inverters, conduit, storage devices, or other electrical and photovoltaic equipment associated with the production of electricity.

SOLAR ENERGY SYSTEM: The components and subsystems required to convert solar energy into electric energy suitable for use. The term includes, but is not limited to, Solar Panels and Solar Energy Equipment. The area of a Solar Energy System includes all the land inside the perimeter of the Solar Energy System, which extends to any interconnection equipment, utility poles, transformers, substations, accessory buildings, and access roadways. A Solar Energy System is classified as a small-scale (Tier 1), commercial-scale (Tier 2), or utility-scale (Tier 3) Solar Energy System as follows.

A. Small-scale (Tier) 1 solar energy systems shall not exceed 20 kWh in average annual capacity, installed and placed for consumption only on-site, and include the following:

a. Roof-Mounted Solar energy systems
b. Building-Integrated Solar energy systems
c. Ground-mounted Solar energy systems

B. Commercial-scale (Tier 2) solar energy systems above 20 kWh in average annual capacity or generate no more than 110% of the electricity consumed on the site over the past 12 months, installed and placed for consumption only on-site and include the following:

a. Roof-Mounted Solar energy systems
b. Building-Integrated Solar energy systems
c. Ground-mounted Solar energy systems

C. Utility-scale (Tier 3) Solar energy systems are systems that produce energy for the primary purpose of off-site consumption or sale to the utility grid.

SOLAR PANEL: A photovoltaic device capable of collecting and converting solar energy into electricity.

STORAGE BATTERY: A device that stores energy and makes it available in an electrical form.

Section 3 - Applicability

A. The requirements of this Town of Dunkirk Local Law shall apply to all Solar energy systems permitted, installed, or modified after the effective date of this Local Law, excluding general maintenance and repair. All Solar energy systems shall be

designed, erected, and installed in accordance with all applicable codes, regulations, and industry standards as referenced in the NYS Uniform Fire Prevention and Building Code ("Building Code"), the NYS Energy Conservation Code ("Energy Code"), and the Town Code.

B. Solar energy systems constructed or installed prior to the effective date of this Local Law shall not be required to meet the requirements of this Local Law.

C. The Town of Dunkirk considers small-scale (Tier 1) solar energy systems, as defined herein, to be Type II actions as defined under Part 617 of NYCRR, Article 8 of the Environmental Conservation Law (SEQRA) and therefore not subject to environmental review. Commercial- (Tier 2) and utility-scale (Tier 3) are considered to have potentially significant adverse environmental impacts and therefore shall be considered Type I action. The need for an Environmental Impact Statement (EIS) shall be determined on a case-by-case basis per application by the permitting board.

D. Modifications to an existing Solar Energy System that increase the Solar Energy System area by more than 5% of the original area of the Solar Energy System (exclusive of moving any fencing) shall be subject to this Local Law.

E. Nothing contained in this local law shall be construed to prohibit "collective solar" installations.

Section 4 – Tier 1 and Tier 2 Requirements

A. This section governs the placement and installation of small-scale (Tier 1) and commercial-scale (Tier 2) Solar energy systems as defined herein. A building permit shall be required prior to the installation of all Solar energy systems with the need for site plan review indicated as necessary.

B. General design considerations:

   a. Glare - All Solar Panels shall have anti-reflective coating(s). Panels shall be located such that no solar glint or glare is directed onto adjoining properties or public roadways. If the Solar energy system creates an adverse impact to the public or neighboring properties, the owner of the system will be required to take measures to mitigate the impact. Failure to take appropriate action will be considered a violation of this local law and the owner will be subject to Section 8.

   b. Advertising – No display of advertising or signage, including, but not limited to, streamers, pennants, spinners, flags, reflectors, ribbons, balloons, banners, or other similar materials is permitted. Exceptions to this include any signage required by the Uniform Code or other safety regulations.

   c. All solar energy systems shall be installed using an engineered mounting structure.

   d. Wiring shall be neatly grouped, routed and continuously supported.

   e. Where feasible, solar energy systems shall be consolidated into array groupings, rather than situated in a disjointed manner.

f. Solar energy equipment shall be installed inside walls and attic spaces, when possible, to reduce their visual impact. If some equipment is visible from a public right of way, it should match the color scheme of the underlying structure.

C. Roof-Mounted Solar energy systems

a. Permitted districts: Roof-mounted solar energy systems are permitted as an accessory use in all zoning districts when attached to lawfully permitted principal or accessory structures, subject to this section.

b. Mounting (pitched roofs): Solar panels on pitched roofs shall be installed parallel to the roof surface on which they are mounted or attached and shall not extend any further than 18 inches from the roof surface at any point. Solar panels shall not extend higher than the highest point of the roof surface on which they are mounted or attached and shall not exceed the maximum height restrictions within any zoning districts.

c. Mounting (flat roofs): Solar Panels on flat roofs shall not exceed nine (9) feet in overall height or extend more than five (5) feet above the surrounding parapet, whichever is less in height.

d. Mounting (other): Solar panels may be mounted to the sides of structures, such that no part of the system projects more than 18 inches from the structure or into the side or rear setback of the property.

e. Access Pathways: For flat or pitched roofs, there shall be a minimum three (3) foot wide clear access pathway from the eave to the ridge on each roof slope (pitched), between the solar panels and roofline (flat), between solar panels and roof-mounted mechanical equipment, and along the roof ridge for smoke ventilation.

f. Site Plan Review: Roof-mounted small-scale (Tier 1) and commercial-scale (Tier 2) solar energy systems are exempt from site plan review.

D. Ground-Mounted Solar energy systems

a. Permitted Districts: Roof-mounted solar energy systems are permitted as an accessory use in all zoning districts, subject to this section, with exceptions noted below.

b. Prohibited Locations: Legal properties in the Town of Dunkirk that have both roadside frontage and lakefront frontage, in which the lakefront is considered the front yard, shall be prohibited from installing ground-mounted solar energy systems to maintain aesthetics and visual character of the lakefront. Building integrated and roof-mounted solar energy systems are permitted in these areas.

c. Installation Areas: Solar panels shall be installed in the rear yard. If a side yard installation is applied for, the property upon which the solar energy systems is installed must be equal to or larger than two (2) acres. Side yard installations require site plan approval from the Planning Board.

d. Setbacks: Solar energy systems shall be subject to all accessory building setback requirements of the underlying zoning district

e. Height: Solar energy systems, including panels and mounts, shall not exceed fifteen (15) feet in height when oriented at maximum tilt.

f. Lot Coverage: The surface area of ground-mounted solar panels shall be included in the lot coverage and impervious surface calculations at its maximum horizontal configuration of the underlying zoning district.

g. Site Plan Review: Ground-mounted small-scale (Tier 1) and commercial-scale (Tier 2) solar energy systems for side yard installations are subject to site plan review required per Section 4Dc.

h. Additional Design Standards:

i. All ground-mounted solar energy systems shall have views minimized from adjacent properties to the extent reasonably practicable.

ii. Solar Energy Equipment shall be located in a manner to reasonably avoid and/or minimize blockage of views from surrounding properties and shading of property to the north, while still providing adequate solar access.

E. Building Integrated solar energy systems. These systems shall be shown on the plans submitted for the building permit application for the building containing the system.

Section 5 – Tier 3 Requirements

A. This section governs the placement and installation of utility-scale (Tier 3) solar energy systems as defined herein and subject to special use permit and site plan review in accordance with Article XII and XIII and any additional regulations contained in this section.

B. Permitted Districts: Tier 3 solar energy systems are specially permitted on lots that are a minimum of 20 acres and a maximum of 40 acres in size in the M-1 and M-2 Zoning Districts, subject to the regulations contained herein. No Tier 3 solar energy systems will be permitted to be located across multiple parcels.

C. Special Use Permit & Design Standards

a. Height: Solar energy systems, including panels and mounts, shall not exceed fifteen (15) feet in height when oriented at maximum tilt.

b. Setbacks/Siting:

i. Side/Rear Setbacks: The solar energy system (including fencing and any access roads) shall be placed at least 100 feet from any side or rear property lines.

ii. Residential Building Setbacks: The solar energy system (including fencing and any access roads) shall be placed at least 200 feet from any structure which is regularly occupied by humans, including accessory structures, regardless of whether said structure(s) are located on the applicant's lot or on any adjoining lot.

iii. Roadway Setbacks: The solar energy system (including fencing and any access roads) shall be placed at least 200 feet from any roadway, right-of-way, school, playground or park.

iv. Where feasible, solar energy systems shall be consolidated into array groupings, rather than situated in a disjointed manner.

c. Lot coverage. Lot coverage shall not exceed the maximum lot coverage requirement of the underlying zoning district. The following components of a Tier 3 Solar Energy System shall be considered included in the calculations for lot coverage requirements:

i. Foundation systems, typically consisting of driven piles or monopoles or helical screws with or without small concrete collars.

ii. All mechanical equipment of the Solar Energy System, including any pad mounted structure for batteries, switchboard, transformers, or storage cells.

iii. Paved access roads servicing the Solar Energy System.

d. Fencing Requirements. All mechanical equipment, including any structure for storage batteries, shall be enclosed by a 7-foot-high fence, as required by NEC, with a self-locking gate to prevent unauthorized access.

e. Screening and Visibility. Tier 3 solar energy systems shall be required to:

i. Submit a screening & landscaping plan to show adequate measures to screen through landscaping, grading, or other means so that views of Solar Panels and Solar Energy Equipment shall be minimized as reasonably practical from public roadways and adjacent properties to the extent feasible.

ii. The screening & landscaping plan shall specify the locations, elevations, height, plant species, and/or materials that will comprise the structures, landscaping, and/or grading used to screen and/or mitigate any adverse aesthetic effects of the system, following any applicable rules and standards established by the Town for such elements. Existing vegetation may be used to satisfy all or a portion of the required landscaped screening.

iii. Native species shall be utilized.

f. Utility Interconnection. Interconnection data and a copy of written notification to the utility of the proposed interconnection, including the CESIR (Coordinated Electric System Interconnection Review) report application submitted to the local utility.

g. Environmental Review. In addition to the information contained in Section 3c, the Town Board shall be designated as the lead agency for the SEQRA process. A visual site assessment on public roadways and adjacent properties may also be requested subject to the discretion of the Planning Board. At a minimum, a line-of-sight profile analysis shall be provided as part of the site plan review. Depending upon the scope and potential significance

of the visual impacts, additional impact analyses, including for example a digital viewshed report, may be required to submitted by the applicant.

h. Agricultural Assessment:

   i. The viability and suitability of the site for agricultural production (as defined by NYS Agriculture and Markets) and/or livestock grazing, including, but not limited to, the identification of important farm soils (classified as those within soil groups 1-4) and the extent of agricultural activity taking place on such lands. Tier 3 solar energy systems shall not be installed on more than 25% of these farm soils.

   ii. Anticipated use for any remaining lands and any secondary uses of land within the solar system land area for agricultural purposes, including but not limited to, grazing, wildflowers, pollinator habitat, etc. A detailed plan shall be included specifying seeding mix (native species), potential sources of local grazing sources, or other information as specified by the Planning Board.

i. Underground Requirements. All on-site utility lines shall be placed underground to the extent feasible and as permitted by the serving utility, with the exception of the main service connection at the utility company right-of-way and any new interconnection equipment, including without limitation any poles, with new easements and right-of-way.

j. Vehicular Paths. Vehicular paths within the site shall be designed to minimize the extent of impervious materials and soil compaction.

k. Signage.

   i. No signage or graphic content shall be displayed on the Solar energy systems except the manufacturer's name, equipment specification information, safety information, and 24-hour emergency contact information. Said information shall be depicted within an area no more than eight (8) square feet.

   ii. As required by National Electric Code (NEC), disconnect and other emergency shutoff information shall be clearly displayed on a light reflective surface. A clearly visible warning sign concerning voltage shall be placed at the base of all pad-mounted transformers and substations.

l. Glare. All Solar Panels shall have anti-reflective coating(s).

m. Lighting. Lighting of the Solar energy systems shall be limited to that minimally required for safety and operational purposes and shall be reasonably shielded and downcast from abutting properties.

n. Tree-cutting. Removal of existing trees larger than six (6) inches in diameter should be minimized to the extent possible.

o. Certification. Solar energy systems and Solar Energy Equipment shall be certified under the applicable electrical and/or building codes as required.

p. Fees. The Town Board of the Town of Dunkirk is hereby authorized to adopt a fee schedule by resolution for application and permit fees for solar energy systems. Such fee schedule to be adopted by Town Board resolution, with authority to amend the fee schedule from time to time by Town Board resolution.

D. Site Plan Review: In addition to the required information specified in Article XII, Tier 3 solar energy systems shall include the following information in the site plan application and plans:

a. Property lot lines and the location and dimension of all existing structures, and uses, and natural features on site and off site which are within 500 feet of the solar panels.

b. Proposed changes to the landscape of the site, grading, vegetation clearing and planting, exterior lighting, and screening vegetation or structures.

c. A one- or three-line electrical diagram detailing the Solar Energy System layout, solar collector installation, associated components, and electrical interconnection methods, with all National Electrical Code compliant disconnects and over current devices.

d. A preliminary equipment specification sheet that documents all proposed solar panels, significant components, mounting systems, and inverters that are to be installed. A final equipment specification sheet shall be submitted prior to the issuance of building permit.

e. Name, address, and contact information of proposed or potential system installer and the owner and/or operator of the Solar Energy System. Such information of the final system installer shall be submitted prior to the issuance of building permit.

f. Name, address, telephone number of the property owner(s) and the section, block, lot (SBL) tax number of the parcel(s) involved, demonstrating their consent to the application and the use of the property for the Solar Energy System. Copies of the deed and a current survey shall be included. If the property owner is not the applicant, the application shall include the name, address and telephone number of the applicant and a letter of authorization signed by the fee simple property owner authorizing the applicant to represent the property owner. Parcel(s) subject to the proposed utility-scale solar energy system shall not include land rented or leased from the fee simple owner.

g. Documentation of access to the project site, including location of all access roads, gates, parking areas, etc.

h. Location of battery storage (if planned or anticipated in future phases.

i. *Location of access roads (with details) including gates, parking areas, etc.*

j. Proposed layout of the entire solar energy system along with a description of all components (including inverters and transformers), whether on site or off site, existing vegetation and proposed clearing and grading of all sites

involved, and utility lines, both above and below ground, on the site and adjacent to the site.

k. Zoning district designation for the parcel(s) of land comprising the project site.

l. Erosion and sediment control and storm water management plans prepared to New York State Department of Environmental Conservation standards, if applicable, and to such standards as may be established by the Planning Board.

m. Prior to the issuance of the building permit or final approval by the Planning Board, but not required as part of the application, engineering documents must be signed and sealed by a New York State (NYS) Licensed Professional Engineer or NYS Registered Architect.

n. Utility interconnection data and a copy of written notification to the utility of the proposed interconnection, including the CESIR (Coordinated Electric System Interconnection Review) report application submitted to the local utility.

E. Operations and Maintenance (O&M) Plan.

a. Plan to include responsible entity with such activity, frequency of maintenance, frequency, and scope of any replacement of equipment, replacement of any fencing or screening vegetation, a safety plan that includes any special instructions to local fire agencies, and any other such information as required by the Planning Board. Yearly reporting on the operations of the facility shall be provided to the Town Board yearly. Where agricultural dual-use projects are proposed, an O&M plan shall also include an agricultural monitor to ensure that agricultural uses within the project area are active, maintained, and productive.

b. Solar energy systems shall be maintained in good working order and in accordance with industry standards. Site access shall be maintained, including snow removal at a level acceptable to the local fire department and, if the Tier 3 Solar Energy System is located in an ambulance district, the local ambulance corps.

c. Tier 3 Solar Energy System owners shall develop, implement, and maintain native vegetation to the extent practicable pursuant to a vegetation management plan by providing native perennial vegetation and foraging habitat beneficial to game birds, songbirds, and pollinators. To the extent practicable, when establishing perennial vegetation and beneficial foraging habitat, the owners shall use native plant species and seed mixes.

F. Decommissioning.

a. Solar energy systems that have been abandoned and/or not producing electricity for a period of 12 months, as determined by the Owner/Operator or Zoning Officer, shall be removed at the expense of the Owner/Operator, or any subsequent Owner, which at the Owner's option may come from any security made with the Town as set forth in Section 5G herein. The Owner/Operator may rectify this determination upon adequate proof that the

facility is still viable and operational; expenses for such shall be borne by the Owner/Operator. Repairs/modifications to make the system operational or removal of the system shall occur no later than 60 days after the initial determination.

b. A decommissioning plan signed by the Owner/Operator of the Solar Energy System and prepared by an engineer licensed in the State of New York, shall be submitted, addressing the following:

   i. The anticipated viable life of the solar energy system in accordance with industry standards.

   ii. Indicate the removal of all infrastructure and restoration conducted to return the parcel to its original state prior to construction.

   iii. The time required to decommission and remove the Solar Energy System any ancillary structures, including repair of any damage caused to the property by the installation and removal of the Solar Energy System.

   iv. An expected timeline for execution and a cost estimate for decommissioning prepared by a professional engineer or qualified contractor. Cost estimates shall take inflation into consideration and be revised every three (3) years during the operation of the system and include any salvage value, though this value shall not be included in the financial surety for decommissioning. Removal of the large-scale solar energy system must be completed in accordance with the approved decommissioning plan and the standards provided as follows:

      1. All structures and foundations associated with the large-scale solar energy systems shall be removed;

      2. All disturbed ground surfaces shall be restored to original conditions, including topsoil and seeding as necessary; and

      3. All electrical systems shall be properly disconnected, and all buried cables and wiring shall be removed.

G. Security.

a. Amount: The deposit, executions, or filing with the Town Clerk of cash, bond, or other form of security reasonably acceptable to the Town attorney and/or engineer, shall be in an amount sufficient to ensure the good faith performance of the terms and conditions of the permit issued pursuant hereto and to provide for the removal and restorations of the site after removal. The amount of the bond or security shall be 125% of the cost of removal of the Tier 3 Solar Energy System and restoration of the property with an escalator of 2% annually for the viable life of the Solar Energy System. Security shall cover the full decommissioning costs without recoverable costs from salvage value; applicant to include anticipated salvage value, but this shall not be factored into the decommissioning costs. All expenses or costs of establishing or maintaining financial assurance shall be borne solely by the

applicant, or its successors or assigns. Any remaining security available after full removal and restoration of the site, to the satisfaction of the Town, will be returned to the applicant or any subsequent owner.

b. Default: In the event of default upon performance of such conditions, after proper notice and expiration of any cure periods, the cash deposit, bond, or security shall be forfeited to the Town, which shall be entitled to maintain an action thereon. The cash deposit, bond, or security shall remain in full force and effect until restoration of the property as set forth in the decommissioning plan is completed. In the event of default or abandonment of the Solar Energy System, the system shall be decommissioned as set forth herein.

H. Ownership Changes. If the owner or operator of the Solar Energy System changes or the owner of the property changes, the special use permit shall remain in effect, provided that the successor owner or operator assumes in writing all of the obligations of the special use permit, site plan approval, and decommissioning plan. A new owner or operator of the Solar Energy System shall notify the Zoning Officer of such change in ownership or operator within 30 days of the ownership change.

I. Host Community Agreement. To ensure that solar energy projects adequately benefit the overall community and that solar energy resources are used to support and mitigate the costs and impacts the solar development will have on the community, applicants for Tier 3 Solar Energy Systems shall enter into a Host Community Agreement (HCA) with the Town. The applicant or its successors shall be required to pay the Town a mutually agreed upon Host Community Fee annually to compensate the Town for any expenses (e.g., monitoring, inspections) and environmental impacts associated with the project as may be necessary to protect the Town's and its citizen's interest. The Host Community Fee shall be in addition to any payment in lieu of taxes (PILOT) which may be authorized to be collected by the Town.

J. The Town Board shall be the permitting Board for all Tier 2 & 3 applications. Town Board may refer such applications to Planning Board for review and report.

Section 6 - Permit Time Frame and Abandonment

A. The Special Use Permit and site plan approval for a Solar Energy System shall be valid for a period of 12 months, provided that a building permit is issued for construction. In the event construction is not completed in accordance with the final site plan, as may have been amended and approved, as required by the Planning Board, within 12 months after approval, the applicant or the Town may extend the time to complete construction for 180 days. If the owner and/or operator fails to perform substantial construction after 24 months, the approvals shall expire.

B. If the owner and/or operator fails to comply with decommissioning upon any abandonment, the Town may, at its discretion, utilize the bond and/or security for the removal of the Solar Energy System and restoration of the site in accordance with the decommissioning plan.

Section 7 – Violations & Enforcement

Any violation of this Solar Energy Law shall be subject to the same enforcement requirements, including the civil and criminal penalties, provided for in the zoning or land use regulations of Town, and under the Town Law of the State of New York.

Section 8 - Severability

The invalidity or unenforceability of any section, subsection, paragraph, sentence, clause, provision, or phrase of the sections, as declared by the valid judgment of any court of competent jurisdiction to be unconstitutional, shall not affect the validity or enforceability of any other section, subsection, paragraph, sentence, clause, provision, or phrase, which shall remain in full force and effect.

Section 9 – Repeal

This Local Law shall also repeal, insofar as it may be inconsistent herewith, Local Law No. 3 of the year 2017, Solar Facilities Law of the Town of Dunkirk. All other provisions of Local Law No. 3 of 2017 shall continue.

Section 10 – Effective Date

This Local Law shall become effective upon filing with the Secretary of State.

1. I hereby certify that the local law annexed hereto, designated as local law No. 4 of 2021 of the Town of Dunkirk was duly passed by the Town Board of the Town of Dunkirk on December 21, 2021 in accordance with the applicable provisions of law.

(Seal)

Rebecca L Jarlon
Clerk of the Town of Dunkirk

Date: December 21, 2021